

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF ADMINISTRATION

In the Matter of the Appeal of the  
Determination of the Responsible  
Authority for Hennepin County  
Department of Children and Family  
Services that Certain Data Concerning  
Steven Stavnes is Accurate and/or  
Complete

ORDER ON DISCOVERABILITY  
OF NOT PUBLIC DATA

At a prehearing conference held on April 13, 1998 the appellant requested access to not public data in the county's possession. The county opposes disclosure of that data and surrendered the same for an *in camera* review by the administrative law judge (ALJ) pursuant to Minn. Stat. § 13.03, subd. 6 (1996).

Vicki Vial-Taylor, Assistant County Attorney, Office of the Hennepin County Attorney, Health Services Building, Suite 1210, 525 Portland Avenue, Minneapolis, MN 55415, appeared on behalf of the county. Linda Ojala, Kurzman, Grant & Ojala, Attorneys at Law, St. Anthony Main Event Centre, 219 SE Main Street, Suite 403, Minneapolis, MN 55414, appeared on behalf of the Appellant.

Based upon the ALJ's *in camera* review of the not public data, and for the reasons set forth in the accompanying memorandum,

IT IS HEREBY ORDERED: That the appellant is entitled to discovery of the alleged victim's videotaped interview and the not public data submitted for *in camera* review subject to the terms of the ALJ's protective orders and on the following additional conditions:

1. If the videotape is disclosed to an expert, the expert must agree, in writing, to abide by the ALJ's protective orders and not to divulge the contents of the videotape or the not public data to anyone other than those persons listed in the protective order.
2. Any expert who, at the appellant's request, reviews not public data or the videotape may testify about the review and the data at the hearing on appellant's appeal.

Dated this 14<sup>th</sup> day of April, 1998

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JON L. LUNDE

Administrative Law Judge

## **MEMORANDUM**

On July 31, 1995 the county received a report alleging that the Appellant had sexually abused his girlfriend's five year old daughter. Following an investigation the county substantiated maltreatment of the child. Appellant seeks discovery of the documents and a videotaped interview of the child in connection with his challenge to the accuracy and/or completeness of data substantiating his alleged abuse of the child.

The data appellant seeks to discover are relevant to his appeal and are discoverable under Minn. R. 1400.6700 (1997). When data is discoverable, Minn. Stat. § 13.03, subd. 6 states:

If the data are discoverable the presiding officer shall decide whether the benefit to the party seeking access to the data outweighs any harm to the confidentiality interests of the agency maintaining the data, or of any person who has provided the data or who is the subject of the data, or the privacy interests of an individual identified in the data. In making the decision, the presiding officer shall consider whether notice to the subject of the data is warranted and, if warranted, what type of notice must be given. \* \* \*

The appellant's interest in clearing his name and in correcting not public data which he alleges is inaccurate and/or incomplete outweighs the confidentiality interest of any of the persons mentioned in the statute. The county has asserted no confidentiality interest in the data and has requested that only the name of the person who reported the alleged sexual abuse not be disclosed. The privacy interests of the victim and her parents and other persons who provided data to the county are outweighed by the interests of the appellant because most of the data is already known to the appellant and a protective order can be issued to protect the privacy interests of the victim and any persons who provided data or who are the subject of the data. Therefore, the Administrative Law Judge is persuaded that the not public data in the county's possession should be disclosed to the appellant subject to the terms of a protective order.

The appellant also seeks a copy of a videotaped interview of the alleged victim in which she describes and explains the alleged act of sexual abuse. In order to determine if the videotape should be disclosed to the appellant, the ALJ is required to consider the provisions of section 611A.90, subd. 2(b). The latter statute relates specifically to the release of videotaped interviews of child abuse victims. Subdivision 2 states:

Court order required.

(a) A custodian of a videotape of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse as part of an investigation or evaluation of the abuse may not release a copy of the videotape without a court order, notwithstanding that the subject has consented to the release of the videotape or that the release is authorized under law.

(b) The court order may govern the purpose for which the videotape may be used, reproduction, release to other persons, retention and return of copies, and other requirements reasonably necessary for protection of the privacy and best interest of the child.

Obtaining a copy of the videotaped interview of the appellant's alleged victim is essential to the appellant's case and disclosure of one copy of the videotape to appellant's counsel should be disclosed subject to the conditions of a protective order regarding the reproduction, release to other persons, retention and return of copies, and other requirements set forth in the Protective Order.

J.L.L.